

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO</p> <p>1777 6th Street Boulder, Colorado 80302</p> <hr/> <p>THE STATE OF COLORADO, ex rel. John W. Suthers, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>PETER A. JOHNSON, an individual; and AMERICAN SUMMIT FINANCIAL SERVICES INC., a Colorado corporation,</p> <p>Defendants.</p>	<p>FILED Document DATE FILED: November 19, 2009 2:10 PM CO Boulder County District Court 20th ID Filing Date: November 19, 2009 02:10 PM MST Filing ID: 28130685 Review Clerk: Debra Crosser</p> <p>▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General,* Reg. No. 20909 Andrew.McCallin@state.co.us ERIK R. NEUSCH, Assistant Attorney General,* Reg. No. 33146 Erik.Neusch@state.co.us 1525 Sherman Street, 7th Floor Denver, Colorado 80203 Phone: 303-866-4500 *Counsel of Record</p>	<p>Case No.:</p> <p>Ctrm:</p>
<p align="center">COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through the undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado, ex rel. John W. Suthers, under the Colorado Consumer Protection Act, §§ 6-1-101 – 6-1-1120, C.R.S. (2009) (“CCPA”), to enjoin and restrain Defendant Peter A. Johnson, an individual, and Defendant American Summit Financial Services Inc., a Colorado corporation, from engaging in deceptive trade practices, impose statutorily-mandated civil penalties, for restitution to consumers and disgorgement of unjust proceeds, and for other relief as provided in the CCPA.

PARTIES

2. Plaintiff John W. Suthers is the duly elected Attorney General for the State of Colorado and has express jurisdiction and authority to investigate and to prosecute violations of the CCPA, §§ 6-1-101 – 6-1-1120, C.R.S. (2009).

3. Defendant American Summit Financial Services Inc. (“American Summit Financial” or “ASFS”) is a for profit Colorado corporation organized and existing under Colorado law. Its principal place of business is 6505 Kalua Road, No. 303, Boulder, Colorado 80301. The registered agent designated for service of process is Peter A. Johnson at 6505 Kalua Road, No. 303, Boulder, Colorado 80301.

4. Defendant Peter A. Johnson is an individual and resides at 6505 Kalua Road, No. 303, Boulder, Colorado 80301. On November 5, 2008, Defendant Johnson formed American Summit Financial by filing articles of incorporation with the Colorado Secretary of State.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to the CCPA, §§ 6-1-103 and -110(1), C.R.S. (2009).

6. Under § 6-1-103, C.R.S. (2009), venue is proper because Defendants engaged in the modification of real estate secured, owner occupied, residential mortgage loans, and foreclosure consultation services, from and within the County of Boulder.

RELEVANT TIMES

7. The conduct giving rise to the claims for relief contained in this Complaint began in October 2008. Thus, Plaintiff timely brings this action pursuant to § 6-1-115, C.R.S. (2009) in that Plaintiff commenced this action within three years of the date on which false, misleading, and deceptive acts or practices occurred or were discovered.

PUBLIC INTEREST

8. The Attorney General has reason to believe that Defendants have engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendants have caused and will continue to cause injury, loss, and damage not only to Colorado consumers, but also to legitimate businesses that lawfully conduct trade and commerce in Colorado, including those that make legitimate mortgage transactions. The Attorney General believes that this action is in the public interest.

ACTS OF AGENTS

9. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents and representatives of such Defendants did, or authorized, such act or practice on behalf of said Defendants, while actively engaged in the scope of their duties.

10. Whenever reference is made in this Complaint to any act of Defendants, such allegation shall be deemed to mean the act of each Defendant acting individually and jointly.

GENERAL ALLEGATIONS

11. In or around October 2008, American Summit Financial entered into a business partnership agreement with AHGN corp., d/b/a Summit Resolutions, a Colorado corporation, located at 1900 55th Street, Suite 208, Boulder, Colorado 80301 (“Summit Resolutions”). At all relevant times, Andrew L. Hardy owned Summit Resolutions and worked with American Summit Financial and Peter Johnson to advertise and perform loan modification and foreclosure consulting services in Colorado and throughout the United States.

12. American Summit Financial, in conjunction with Summit Resolutions, including but not limited to business associates, employees, independent contractors, brokers, salespersons and/or agents, has offered to negotiate or originate loan modifications and offered foreclosure consulting services for consumers throughout the United States. Defendant American Summit Financial and Defendant Johnson charged and collected an upfront fee ranging from \$1,999 to \$2,500 for these services before fully performing those services. Defendants have refused or failed to provide refunds of this upfront fee when the promised services are not fully performed.

13. As part of the business partnership between American Summit Financial and Summit Resolutions, American Summit Financial used Summit Resolutions’ business operations, including its physical address and employees, to advertise loan modification and foreclosure consulting services in Colorado and throughout the United States.

14. On behalf, and at the direction, of American Summit Financial, Andrew L. Hardy’s and Summit Resolutions’ employee, Jason Pelka, contacted consumers to generate clients for loan modifications and foreclosure consulting. Neither Mr. Hardy nor Mr. Pelka is licensed in Colorado as mortgage loan originator under C.R.S. §§ 12-61-901 *et seq.* Nor is Defendant Johnson licensed as a mortgage loan originator.

15. The Division of Real Estate has issued a position statement concluding that persons attempting mortgage modifications are subject to the licensing requirements in C.R.S. §§ 12-61-901 *et seq.* See Division of Real Estate: Position Statement MLO 1.5—Loan Modifications (Issued on Nov. 18, 2008 and Revised December 11, 2008).

16. American Summit Financial maintains a Web site that makes misleading, false and deceptive statements regarding employee work experience and success rates for loan

modifications. This Web site remained active as of October 14, 2009. The Web site falsely and deceptively proclaims:

Our decades of experience in the mortgage banking, real estate, and financial industries mean that we speak the language of business. In fact, there's a very good chance the person who personally negotiates a better deal for you with your lender has worked specifically in the department of the mortgage lender's business that deal with us—we know their game better than they know their game in most cases. (There are many lenders and we have not dealt with every bank on the planet, but if most people have heard of your lender, chances are we know the extension of the person we need to talk to—and we've probably spoken to them before.)

<http://www.americansummitfinancial.com/aboutus.html> (visited October 14, 2009). The Web site also contains a televised advertisement about its services, which are misleading, deceptive and false. The Web site also deceptively proclaims:

As experts in the mortgage industry we have our finger on the pulse of the latest legislation at the State and Federal levels and how the newest laws affect—and benefit—our clients. There are programs that will assist homeowners that are behind with interest-free, payment-free financing (subject to numerous conditions and catches) to get caught up, and up to 3 years without payments (also known as a forbearance period). Due to the economic climate we are facing we expect this area of the mortgage industry to nearly constantly be in flux for the next few years.

<http://www.americansummitfinancial.com/services.html> (visited October 14, 2009).

17. Defendant Johnson admitted under oath on September 21, 2009 that neither he nor any person working at or on behalf of American Summit Financial has experience remotely approaching a decade, much less “decades,” in the mortgage banking, real estate, or financial industries.

18. Moreover, this Web site falsely and deceptively provides the following testimonial:

“After losing my husband I was worried about losing my home. Because of the drop in the stock market the IRA I was borrowing against to pay my mortgage was liquidated and I had no more money. Peter discovered that the lender had broken the law and convinced them to lower the interest rate far enough to where I

could profitably rent out the house and move on to my new life. I can't thank you enough Peter—I don't know what I would have done without you." S.V. Louisville, CO

<http://www.americansummitfinancial.com/aboutus.html> (visited October 14, 2009).

19. Defendant Johnson has admitted under oath on September 21, 2009 that this testimonial is false and the person identified as "S.V. Louisville, CO" is an actual Colorado consumer who has demanded, but not yet received, a refund of an upfront fee of \$1,999 she paid to American Summit Financial for an unsuccessful mortgage modification.

20. In addition, Defendants' Client Service Agreement with consumers contained the following guarantee: "In the event that ASFS is unable to modify your mortgage, ASFS will refund one hundred percent (100%) of the fees paid." The Web site also states: "ASFS provides more for you than any other company that tries to emulate us—Not only in our high level of expertise, but in the range of services and specific options we offer—and we stand behind our services 100%. How you are treated is how our reputation grows—and we would never do anything to risk it." <http://www.americansummitfinancial.com/services.html> (visited October 14, 2009). The Web site also falsely states that American Summit Financial has no complaints with the Better Business Bureau. To the contrary, American Summit Financial has an "F" rating with the Better Business Bureau.

21. In October 2008, consumers in Kissimmee, Florida were contacted by American Summit Financial and Summit Resolutions. On November 3, 2008, these consumers entered into a Client Service Agreement for loan modification services. They paid \$2,000 for such services and American Summit Financial was unable to secure a loan modification. A refund was never provided to these consumers.

22. In October 2008, consumers in Troy, Michigan were contacted by American Summit Financial and Summit Resolutions. On November 2, 2008, these consumers entered into a Client Service Agreement for loan modification services. They later paid \$2,000 for such services and American Summit Financial was unable to secure a loan modification. A refund was never provided to these consumers.

23. In December 2008, a consumer in Broomfield, Colorado was contacted by American Summit Financial and Summit Resolutions. On December 16, 2008, the consumer entered into a Service Agreement for loan modification services. The consumer paid one half (\$1,000) of the total amount (\$2,000) for such services. American Summit Financial was unable to secure a loan modification and a refund was never provided to the consumer.

24. In October 2008, American Summit Financial and Peter Johnson contacted a consumer in Louisville, Colorado. On October 6, 2008, the consumer entered into a Client Service Agreement for loan modification services. The consumer paid \$1,999 for such services and American Summit Financial was unable to secure a loan modification, and a refund was

never provided to the consumer. Defendants failed to respond to the consumer's inquiries regarding a refund of the upfront fee based on the Client Service Agreement's explicit refund policy.

25. The Attorney General contends that these loan modification and foreclosure consulting practices violate the CCPA, including but not limited to §§ 6-1-105(1) (e), (g), (i), (u), (z), (uu) and (xx), C.R.S. (2009).

FIRST CLAIM FOR RELIEF

(False representations as to the characteristics, ingredients, uses, benefits, alterations, or quantities of services in violation of § 6-1-105(1)(e), C.R.S. (2009))
(All Defendants)

26. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 25 of this Complaint.

27. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants knowingly have made false representations as to the characteristics, uses, benefits, alterations or quantities of services in violation of § 6-1-105(1)(e), C.R.S. (2009).

28. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants have deceived and misled Colorado consumers.

SECOND CLAIM FOR RELIEF

(Representations that services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they know that they are of another in violation of § 6-1-105(1)(g), C.R.S. (2009))
(All Defendants)

29. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 28 of this Complaint.

30. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants made representations that services are of a particular standard, quality or grade, even though Defendants knew that the services were of another in violation of § 6-1-105(1)(g), C.R.S. (2009).

31. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants have deceived and misled consumers.

THIRD CLAIM FOR RELIEF

(Advertises services with intent not sell them as advertised in violation of § 6-1-105(1)(i),
C.R.S. (2009))
(All Defendants)

32. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 31 of this Complaint.

33. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants advertised mortgage loan products with the intent not to sell them as advertised in violation of § 6-1-105(1)(i), C.R.S. (2009).

34. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants have deceived and misled consumers.

FOURTH CLAIM FOR RELIEF

(Failure to disclose material information concerning services in violation of § 6-1-105(1)(u), C.R.S. (2009))
(All Defendants)

35. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 34 of this Complaint.

36. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants failed to disclose material information concerning services of which they knew at the time of advertising or sale, thereby intending to induce consumers to enter into a mortgage modification and foreclosure consultation with Defendants in violation of § 6-1-105(1)(u), C.R.S. (2009).

37. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants have deceived and misled consumers.

FIFTH CLAIM FOR RELIEF

(Refusal or failure to obtain all governmental licenses required to perform services in violation of § 6-1-105(1)(z), C.R.S. (2009))
(Defendant Peter Johnson)

38. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 37 of this Complaint.

39. Through the above-described conduct and in the course of his business, vocation, or occupation, Defendant Johnson refused or failed to obtain all governmental licenses required to perform mortgage modifications in violation of § 6-1-105(1)(u), C.R.S. (2009).

40. Through the above-described conduct and in the course of his business, vocation, or occupation, Defendant Johnson has deceived and misled consumers.

SIXTH CLAIM FOR RELIEF

(Knowingly advertising false, misleading, or deceptive statements with regard to terms or conditions for a mortgage loan in violation of § 6-1-105(1)(uu), C.R.S. (2009))
(All Defendants)

41. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 40 of this Complaint.

42. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants knowingly advertised false, misleading, or deceptive statements with regard to terms or conditions for a mortgage loan in violation of § 6-1-105(1)(uu), C.R.S. (2009).

43. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants have deceived and misled consumers.

SEVENTH CLAIM FOR RELIEF

(Charging and collecting compensation before services are fully performed in violation of § 6-1-1107 and § 6-1-105(1)(xx), C.R.S. (2009))
(All Defendants)

44. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 43 of this Complaint.

45. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants charged and collected compensation before they fully performed each and every service they contracted to perform or represented that they would perform in violation of § 6-1-1107(1)(a) and § 6-1-105(1)(xx), C.R.S. (2009).

46. Through the above-described conduct and in the course of their business, vocation, or occupation, Defendants have deceived and misled consumers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

That Defendant American Summit Financial Services Inc., its affiliates, officers, directors, employees, agents, related entities, successors and assigns, and any and all other persons who act under, by, through, or on behalf of Defendant American Summit Financial Services Inc., and that Defendant Peter A. Johnson, individually and personally, be permanently

restrained and enjoined from doing any of the wrongful acts referenced in this Complaint or any other act in violation of the CCPA, relating to originating mortgage loans, mortgage loan modifications, and foreclosure consultation in the state of Colorado.

In addition, Plaintiff respectfully prays for the following relief:

- A. An order that Defendants' above-described conduct is in violation of the Colorado Consumer Protection Act, §§ 6-1-105(1)(e), (g), (i), (u), (z), (uu) and (xx), C.R.S. (2009).
- B. A judgment against Defendants, including against Peter A. Johnson individually and personally, in an amount to be determined at trial for restitution to consumers injured as a result of Defendants' violations of the CCPA and as set forth in this Complaint pursuant to § 6-1-110(1), C.R.S. (2009).
- C. An order requiring Defendants, including against Peter A. Johnson individually and personally, to disgorge all unjust proceeds derived from their misleading and deceptive trade practices pursuant to § 6-1-110(1), C.R.S. (2009).
- D. An order requiring Defendants, including against Peter A. Johnson individually and personally, to pay the costs and expenses of this action incurred by the Attorney General, including but not limited to, Plaintiff's attorney fees under § 6-1-113(4), C.R.S. (2009).
- E. Any such further relief as this Court may deem just and proper to effectuate the purposes of the CCPA.

Respectfully submitted this 19th day of November, 2009.

JOHN W. SUTHERS
Attorney General

s/ Erik R. Neusch

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